

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1153

**Introduced by Assembly Members La Suer, Garcia, and Maze
(Coauthors: Assembly Members Benoit, Cogdill, Daucher, Shirley
Horton, Houston, La Malfa, Leslie, Mountjoy, Plescia, Spitzer,
Strickland, and Wyland)**

(Coauthors: Senators Hollingsworth and Runner)

February 22, 2005

An act to ~~add Section 664.5 to~~ amend Section 272 of the Penal Code, relating to offenses against minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 1153, as amended, La Suer. Offenses against minors: *impersonating a minor.*

Existing law provides that an adult stranger who is 21 years of age or older who knowingly contacts or communicates with a minor 12 years of age or younger, and who knew or reasonably should have known that the minor is 12 years of age or younger, for the purpose of persuading and luring, or transporting, that minor away from the minor's home or from another specified location, for any purpose, without the express consent of the minor's parent or legal guardian, and with the intent to avoid the consent of the minor's parent or legal guardian, is guilty of an infraction or a misdemeanor.

This bill would provide that any person whose violation of the above provisions involves falsely impersonating a minor with intent to have sexual contact with, or to commit a lewd and lascivious act on, the minor is punishable by a specified fine, by imprisonment in a county jail for a specified term, or by both. Because the bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law makes it a crime for a person, with knowledge that a person is a minor, or who fails to exercise reasonable care to know the minor's age, to knowingly distribute harmful matter by any means, including telephone, to that minor for the purpose of seducing the minor.~~

~~This bill, in addition, would provide that every person who contacts or communicates with a minor, and who knows or reasonably should know that the person is a minor, with the intent to commit a specified offense with that minor shall be punished as provided for in the law proscribing attempts to commit a crime. Because the bill would create a new crime, it would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 664.5 is added to the Penal Code, to~~
- 2 ~~read:~~
- 3 ~~SECTION 1. Section 272 of the Penal Code is amended to~~
- 4 ~~read:~~
- 5 ~~272. (a) (1) Every person who commits any act or omits the~~
- 6 ~~performance of any duty, which act or omission causes or tends~~
- 7 ~~to cause or encourage any person under the age of 18 years to~~
- 8 ~~come within the provisions of Section 300, 601, or 602 of the~~
- 9 ~~Welfare and Institutions Code or which act or omission~~
- 10 ~~contributes thereto, or any person who, by any act or omission, or~~
- 11 ~~by threats, commands, or persuasion, induces or endeavors to~~
- 12 ~~induce any person under the age of 18 years or any ward or~~

1 dependent child of the juvenile court to fail or refuse to conform
2 to a lawful order of the juvenile court, or to do or to perform any
3 act or to follow any course of conduct or to so live as would
4 cause or manifestly tend to cause that person to become or to
5 remain a person within the provisions of Section 300, 601, or 602
6 of the Welfare and Institutions Code, is guilty of a misdemeanor
7 and upon conviction thereof shall be punished by a fine not
8 exceeding two thousand five hundred dollars (\$2,500), or by
9 imprisonment in the county jail for not more than one year, or by
10 both fine and imprisonment in a county jail, or may be released
11 on probation for a period not exceeding five years.

12 (2) For purposes of this subdivision, a parent or legal guardian
13 to any person under the age of 18 years shall have the duty to
14 exercise reasonable care, supervision, protection, and control
15 over their minor child.

16 (b) (1) An adult stranger who is 21 years of age or older, who
17 knowingly contacts or communicates with a minor who is 12
18 years of age or younger, who knew or reasonably should have
19 known that the minor is 12 years of age or younger, for the
20 purpose of persuading and luring, or transporting, or attempting
21 to persuade and lure, or transport, that minor away from the
22 minor's home or from any location known by the minor's parent,
23 legal guardian, or custodian, to be a place where the minor is
24 located, for any purpose, without the express consent of the
25 minor's parent or legal guardian, and with the intent to avoid the
26 consent of the minor's parent or legal guardian, is guilty of an
27 infraction or a misdemeanor.

28 (2) This subdivision shall not apply in an emergency situation.

29 (3) As used in this subdivision, the following terms are
30 defined to mean:

31 (A) "Emergency situation" means a situation where the minor
32 is threatened with imminent bodily harm, emotional harm, or
33 psychological harm.

34 (B) "Contact" or "communication" includes, but is not limited
35 to, the use of a telephone or the Internet, as defined in Section
36 17538 of the Business and Professions Code.

37 (C) "Stranger" means a person of casual acquaintance with
38 whom no substantial relationship exists, or an individual with
39 whom a relationship has been established or promoted for the

1 primary purpose of victimization, as defined in subdivision (e) of
2 Section 6600 of the Welfare and Institutions Code.

3 (D) “Express consent” means oral or written permission that is
4 positive, direct, and unequivocal, requiring no inference or
5 implication to supply its meaning.

6 (4) This section shall not be interpreted to criminalize acts of
7 persons contacting minors within the scope and course of their
8 employment, or status as a volunteer of a recognized civic or
9 charitable organization.

10 (5) This section is intended to protect minors and to help
11 parents and legal guardians exercise reasonable care, supervision,
12 protection, and control over minor children.

13 *(c) Any person whose violation of subdivision (b) involves*
14 *falsely impersonating a minor with intent to have sexual contact*
15 *with, or to commit a lewd and lascivious act on, the minor is*
16 *punishable by a fine in an amount not exceeding one thousand*
17 *dollars (\$1,000), by imprisonment in the county jail for a period*
18 *not exceeding one year, or by both that fine and imprisonment.*

19 *SEC. 2. No reimbursement is required by this act pursuant to*
20 *Section 6 of Article XIII B of the California Constitution because*
21 *the only costs that may be incurred by a local agency or school*
22 *district will be incurred because this act creates a new crime or*
23 *infraction, eliminates a crime or infraction, or changes the*
24 *penalty for a crime or infraction, within the meaning of Section*
25 *17556 of the Government Code, or changes the definition of a*
26 *crime within the meaning of Section 6 of Article XIII B of the*
27 *California Constitution.*

28 ~~664.5. Every person who contacts or communicates with a~~
29 ~~minor, and who knows or reasonably should know that the~~
30 ~~person is a minor, with intent to commit an offense specified in~~
31 ~~Section 273a, 286, 288, 288a, or 311.11 involving the minor shall~~
32 ~~be punished pursuant to the provisions of Section 664. As used in~~
33 ~~this section, “contacts or communicates with” shall include direct~~
34 ~~contact or communication that may be achieved personally or by~~
35 ~~use of an agent or agency, any print medium, any postal service,~~
36 ~~a common carrier or communications common carrier, any~~
37 ~~electronic communications system, or any telecommunications,~~
38 ~~wire, computer, or radio communications device or system.~~

39 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~
2 ~~district will be incurred because this act creates a new crime or~~
3 ~~infraction, eliminates a crime or infraction, or changes the~~
4 ~~penalty for a crime or infraction, within the meaning of Section~~
5 ~~17556 of the Government Code, or changes the definition of a~~
6 ~~crime within the meaning of Section 6 of Article XIII B of the~~
7 ~~California Constitution.~~

O